

Arbitration

March 18, 2011

183

1 CHAIRMAN: Recess until 9:30 tomorrow
2 morning.

3 UNIDENTIFIED SPEAKER: Off the record.
4 (The proceedings adjourned for the day.)

5 CHAIRMAN: We are back on the record,
6 Wednesday, January 5th, approximately 9:40 a.m. Before
7 we get started with further testimony, do either of
8 you -- or did either of you include in your exhibits the
9 actual U5 form? Is that in this booklet?

10 MR. SHAFFER: Yes.

11 CHAIRMAN: Where is it?

12 MR. SHAFFER: It is Exhibit 8, Tab 8. It
13 has the October 16th letter. And then behind it is the
14 actual U5.

15 CHAIRMAN: Okay. Sure enough. Okay.
16 Thank you very much. All right. The status of the
17 case, as I recall, is that the claimant has rested with
18 regard to the promissory note, but still is interested
19 in providing information with regard to claimed
20 attorney's fees and to defend the counterclaim.

21 And Mr. Shaffer has rested with regard to
22 the presentation of his evidence in support of the
23 counterclaim. So now it's now over to Mr. Kane to
24 proceed.

25 MR. KANE: Thank you, Mr. Chairman. And it



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

184

1 as relates to the defense of the counterclaim, I'm going
2 to call Mr. Shaffer. I'm not going to cover things I
3 covered on the promissory note. This is strictly going
4 to be questions relating to the counterclaim.

5 CHAIRMAN: Fine. Mr. Shaffer, you're still
6 under oath.

7 MR. SHAFFER: Quick question. I thought
8 Mr. Kane presented his response to my counterclaim and,
9 in fact, had asked for a dismissal of the counterclaim?

10 CHAIRMAN: Right. He made a motion to
11 dismiss the counterclaim and he made an argument in
12 support of that motion. You made an argument to refute
13 his motion for dismissal. The panel considered the
14 arguments and then came to the conclusion that the
15 motion would be denied.

16 Now he has an opportunity to obtain
17 testimony or other evidence in defense of your
18 counterclaim. And that's what we're doing now.

19 MR. SHAFFER: I'm sorry.

20 MR. KANE: Okay. What I'm going to do if I
21 can for ease of effort is try to go through
22 Mr. Shaffer's exhibits, and I'm going to try and take
23 them in order. Maybe it would be easier to follow
24 rather than skip around, if I can.

25 So the first one, I tabbed them, we're



ESQUIRE
an Alexander Galla Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

185

1 going past the issues and damages and past the
2 Department of Labor stuff and start with the exhibits
3 where it has exhibits. And the first exhibit I'm going
4 to ask him about in his notebook is Exhibit 2.

5 ARBITRATOR: Are you planning on having
6 witnesses other than Ms. Mortensen?

7 MR. KANE: As of right now, I think it's
8 only going to be Ms. Mortensen.

9 ARBITRATOR: Okay.

10 KENNETH SHAFFER,
11 called as a witness on behalf of the Claimant, being
12 first duly sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. KANE:

15 Q. And, Mr. Shaffer, if you would, please, you
16 have that -- I'm going to refer to it as Shaffer 2.
17 This is a document that you provided yesterday in your
18 counterclaim, I guess. So this is a document that you
19 received from Ms. Mortensen; correct?

20 A. No. This is a document I received in a
21 package from Kane and Fischer that arrived on
22 December 23rd.

23 Q. No, I'm talking about the e-mail from Mary
24 Mortensen to you dated December 29th of 2009. You
25 received that with that information from her, did you



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

186

1 not?

2 A. Yes.

3 Q. Now, keep that in front of you and go to
4 the white notebook, claimant's exhibits, and go to
5 Exhibit 10. And if you look at the bottom of the
6 Exhibit 10, the first page and the second page of
7 Exhibit 10, at least, that coincides with your Shaffer
8 2. Do you see that?

9 A. Uh-huh.

10 Q. You'll have to answer yes or no.

11 A. Yes.

12 Q. And so if you go back to page 1, is there a
13 reason in your presentation that you chose to not
14 include your e-mail response to Ms. Mortensen where you
15 said "I thought gouging was part of our business plan"?
16 Why did you not include the complete e-mail string in
17 your documents?

18 A. Because I didn't think it was pertinent to
19 the question of what the reason was that I was
20 terminated for. And I knew that that was one of the
21 items in your document list, anyway. So why would I
22 include that?

23 Q. Now, you testified yesterday that you told
24 your supervisor, your immediate supervisor at the time,
25 Jan Krug, that you had adjusted these commissions up to



ESQUIRE
an Alexander Media Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

187

1 meet revenue numbers. Do you recall that testimony
2 yesterday?

3 A. Right. To assure that I met month-end
4 revenue numbers to avoid termination, not knowing that
5 this was an overcharge.

6 Q. And you testified that you said the same
7 thing to Ms. Mortensen, that you had adjusted these
8 commissions upward in order to meet revenue numbers?

9 A. Yes. Because I'm honest.

10 Q. And if you go to in Exhibit Shaffer 2, go
11 to the next page after W49, this information that was
12 supplied by the Winnegers; do you see that?

13 A. Right.

14 Q. Did you tell the Winnegers at the time of
15 these trades that you had placed the solicited purchases
16 where you were recommending the purchases, did you tell
17 them that you had adjusted the commissions upwards on
18 their transactions so that you could meet revenue
19 numbers?

20 A. I told them when we discussed the trade
21 that the commission would be about \$1,000, and was that
22 all right with them. I then phoned them and told them
23 that it turns out that the commissions that I had put in
24 were higher than they should have been and that they
25 would be receiving a cancel and rebuild, which I filled



ESQUIRE
an Alexander Galle Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

188

1 out and supplied immediately after request.

2 Q. But that was after Ms. Mortensen had told
3 you that you had charged excessive commissions?

4 A. Right. Because I didn't know it was
5 excessive.

6 Q. But what I'm saying is before -- when you
7 entered the trade for them, did you tell them that you
8 had adjusted the commission up so you could meet their
9 revenue numbers?

10 A. I told them that this trailed would cost
11 about \$1,000. I explained to them -- they always know
12 what the commission charge is going to be on a trade.

13 Q. So I take it you didn't tell them you
14 adjusted it up to meet your revenue numbers?

15 A. In effect I did. I told them it would be
16 \$1,000. I also called to tell them that the \$1,000
17 number was too high and was going to be adjusted
18 downward.

19 Q. If you would go to -- if you would go
20 past -- we're going to go all the way to Number 6,
21 Shaffer 6.

22 A. Yeah.

23 Q. And just so we're clear, this is an e-mail
24 dated December 23rd of 2009 relating to coverage of bank
25 branches; correct?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

189

1 A. Correct.

2 Q. And there was a delay in changing coverage
3 because this Mr. Uren had been -- had delayed his return
4 from medical leave; right?

5 A. Correct.

6 Q. And in the meantime, you were going to
7 continue to cover the Micron branch as well as the
8 Empire Ranch branch; is that correct?

9 A. Right.

10 Q. And would it be correct then -- this is
11 dated September 23rd. It was after this date, if you go
12 back to the white notebook, Exhibit 10, Claimant's
13 Exhibit 10, that the issue regarding the excess
14 commissions was brought up. That came up later,
15 September 29th of 2009; is that correct?

16 A. Right. And you might want to make a note
17 that both Mr. Uren and Mr. Obenshane represented in the
18 e-mail have been terminated.

19 Q. Now, I want to make certain -- I'm going to
20 keep these documents out where they are in front of you.
21 But I want to make sure that I understand this licensed
22 banker program that you talked about yesterday.

23 As I understand it, if a licensed banker --
24 if a banker had a Series 7 license and referred an
25 individual to you, and as a result of that referral, you



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

190

1 were able to close a transaction, that a joint rep code
2 would be opened with -- combining your number and the
3 banker's number; is that fair?

4 A. Correct.

5 Q. And that from that combined number, you
6 received 50 percent of the net of the gross commissions?

7 A. 50 percent of the gross commissions.

8 Q. 50 percent of the gross commissions and
9 then you'd get the net of whatever that 50 percent of
10 gross came out to?

11 A. Correct.

12 Q. And that was not just a situation with you,
13 that was a situation that existed with other licensed
14 bankers and financial advisor when a banker would refer
15 business to them; is that fair to say?

16 A. Licensed bankers were in some branches, but
17 not all. Some branches have multiple licensed bankers,
18 some branches have one.

19 Q. But where there was a licensed banker, that
20 was the practice while -- throughout your employment at
21 Wells Fargo; correct?

22 A. Right. But not any longer.

23 Q. Not just for you?

24 A. Maybe Mary could comment on that.

25 Q. Not just for you, but for other --



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

191

1 A. Right.

2 Q. Okay. And it would also be true, would it
3 not, that but for the referral of that person to you by
4 the banker, you would have not been able to close the
5 transaction. This isn't something you originated, it
6 was originated by the banker; is that correct?

7 A. No. Referrals were 99.9 percent of the
8 time a client of the bank. And if not for the licensed
9 banker referring the client to me, it very possibly
10 could have been referred through a regular bank
11 employee.

12 Q. But it was referred to you by the banker?

13 A. Right. By the licensed banker. If it was
14 by the banker, I would get 100 percent.

15 Q. But the fact that the licensed banker
16 referred the client to you, you wouldn't have gotten a
17 client; right?

18 A. Not necessarily. Because the client was a
19 client of the branch and another banker could have found
20 the client and referred the client to me.

21 Q. But in these situations, it would be a
22 licensed banker that referred the client that caused the
23 joint rep code and you would get the 50 percent?

24 A. Right.

25 ARBITRATOR: I have a question. The



ESQUIRE
an Alexander Galla Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

192

1 licensed banker had a Series 7. Why didn't he just do
2 the --

3 MR. SHAFFER: The financial consultant,
4 or --

5 ARBITRATOR: Why didn't he just sell --

6 MR. SHAFFER: He wasn't allowed to under
7 the terms of his position. These are people that were
8 less experienced. And I think part of the reason they
9 weren't allowed to do the sales themselves, Mary would
10 know about this -- there were some types of sales they
11 could do themselves. I think it was market link CDs.

12 They were basically rookies in the
13 business, and the rule was they couldn't sell most
14 products themselves. There were some mutual funds they
15 could also sell. But on the larger cases, they referred
16 it to the more experienced person, financial consultant.

17 ARBITRATOR: Thank you.

18 BY MR. KANE:

19 Q. We know that in January of 2008, you had
20 hit the production level to get that loan of \$111,000;
21 correct?

22 A. Right. Or the bonus payment.

23 Q. Well, I'll look at the -- let's take a look
24 at exhibit --

25 CHAIRMAN: We understand there's a



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

193

1 disagreement on the characterization.

2 BY MR. KANE:

3 Q. Just so I'm clear, it's \$111,347. So that
4 would mean that during your best 12 months during that
5 18 months, your gross production would be \$222,694,
6 because it was -- you got 50 percent of the gross
7 production during the first -- during your 18 months,
8 the best 12 months; correct?

9 A. Uh-huh.

10 Q. And so this would be -- I'll just round it
11 off to \$222,000. So of that \$22,000, what percentage of
12 that gross production came from referrals to licensed
13 bankers that you had to split 50/50 with?

14 A. Referrals from licensed bankers?

15 ARBITRATOR: He meant from.

16 BY MR. KANE:

17 Q. I'm sorry. I did mean from. Thank you. I
18 apologize.

19 A. Very, very small.

20 Q. So if we were to quantify it, it would be a
21 negligible amount, the split where you just got
22 50 percent really was a negligible amount?

23 A. I would say it was a small amount because
24 the licensed bankers were very good people. They were
25 harried people; they were pressured people. They had



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

194

1 their goals.

2 The amount of qualified referrals for
3 investment purposes that came from licensed bankers was
4 extremely small. The amount of my production during
5 that period, which was from licensed bankers was also
6 extremely small. Because, remember, during that period,
7 my most productive branch, Micron, had no licensed
8 bankers. It was January of the following year, 2009
9 that two licensed bankers were installed there.

10 Q. Well, in 2000 -- I'm sorry.

11 A. So it would be different for 2009 than
12 2008.

13 Q. Let's take 2009. In 2009, what would you
14 say at the time you left that your gross production was,
15 ballpark, \$200,000?

16 A. Yeah. I'm not exactly sure. \$200,000.

17 Q. Approximately?

18 A. Approximately.

19 Q. Of that \$200,000 in 2009, what percentage
20 came from referrals from licensed bankers that would
21 have this impact with the 50 percent?

22 A. What percentage.

23 Q. Yeah. What percentage of the gross are we
24 talking about?

25 A. It's a relatively small percentage. As I



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

195

1 said, the licensed bankers were working hard on a number
2 of different things. They really tried hard but didn't
3 generate a whole lot, especially from the branches I was
4 servicing. So I would say 5 percent may be.

5 I know there was a situation in September
6 where a woman decided to do a -- what's called an
7 inheritance-builder insurance policy. And the
8 commission on that was pretty substantial, \$5- or
9 \$6,000. And I know that was the split just for the
10 month of September where I was on written warning. And
11 that was maybe 5 percent of the total.

12 Q. But you're not able to quantify it?

13 A. I don't know what the numbers are. I have
14 no access to that information.

15 Q. Now, if you would, please, go to your
16 Number 9 in the book. I'm just following it through.
17 It's a Social Security statement. Now, I see on the
18 first page that it's your Social Security statement
19 dated June 1st of 2010. Do you see that?

20 A. On the first page?

21 Q. Yes. In the upper-right-hand corner.

22 A. Yes.

23 Q. So this would be something that would have
24 been provided to you by the Social Security department
25 that would report your earnings up through I guess 2009;



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

196

1 correct?

2 A. Right.

3 Q. Okay. So now if we go to the second page
4 of this, you -- this isn't a complete document of the
5 Social Security statement you received, is it?

6 A. No, it's not. Because you had demanded --
7 the firm Kane and Fischer had demanded that I provide
8 tax records for 2004 to 2009.

9 Q. Well, what you did here was you cut and
10 pasted the pages from your actual Social Security
11 statement to stop at 2003; isn't that correct?

12 A. Right. Because you had already demanded
13 information for 2004 and beyond.

14 Q. Well, I will tell you that no 2004
15 information was provided to us. And I've gone through
16 all of the documents. So why didn't you just produce
17 your complete -- I mean, the complete Social Security
18 statement that you received on June 1st rather than
19 cutting and pasting it to stop at 2003?

20 A. I didn't think about it. I just figured I
21 had already provided 2004, why provide more information
22 of the same type. I do have W-two statements here where
23 I can find my -- you say I did not provide 2004?

24 Q. If you find the 2004 -- I looked last night
25 and I didn't find it in your document production.



ESQUIRE
an Alexander Galtie Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

197

1 A. Can I see that page and I'll show you where
2 it is. The reason was the 2004 -- part of the reason I
3 cut this off, I couldn't fit it on the page. 2004 got
4 cut off. This is my 2004 W-2 from H & R Block Financial
5 Advisors. The reason I brought this is the year got cut
6 off when I was putting the pieces on the copy machine.
7 And so here it is right here.

8 MR. KANE: May I, Mr. Chairman?

9 CHAIRMAN: Yes.

10 BY MR. KANE:

11 Q. You indicated in the document production it
12 didn't have the 2004.

13 A. If you would like me to, I will show you
14 right where it was. It was cut off. That's why I
15 brought this along.

16 Q. This indicates that for 2004, your
17 production at -- well, we'll compare it to the Social
18 Security statement. The Medicare wages are
19 \$123,751.21 -- and Social Security wages are \$87,900.
20 Is that -- did I accurately state that?

21 A. I think so. Can I ask what would be the
22 purpose of this whole thing, going back this far and
23 asking about my previous --

24 CHAIRMAN: We'll find out. He's asking the
25 questions.



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

198

1 ARBITRATOR: He's leading up to it.

2 BY MR. KANE:

3 Q. And I went through them. And maybe you
4 have the 2005 W-2. I couldn't find it last night. But
5 what I did find that you produced was the first page of
6 your 2005 tax return. And so I'm going to --

7 A. It was because I couldn't find the W-2s.

8 Q. I understand. And you produced the tax
9 records. So I'm going to mark this as Claimant's
10 Exhibit 17. It's not in the notebook.

11 ARBITRATOR: Could you repeat the numbers
12 for the H & R Block commissions? 121?

13 MR. SHAFFER: That's not commissions,
14 that's earnings.

15 MR. KANE: \$123,751.21, and Social Security
16 wages was \$87,900.

17 ARBITRATOR: Thank you.

18 MR. KANE: And I'm going to mark this as
19 Claimant's Exhibit 17.

20 CHAIRMAN: And for our record, would you
21 identify what 17 is?

22 MR. KANE: Claimant's Exhibit 17 is a
23 document produced to us by Mr. Shaffer. It's the first
24 page of his 2005 1040.

25 BY MR. KANE:



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

199

1 Q. So as you've indicated, you weren't able to
2 locate your W-2, but at least in terms of the wages that
3 are reported by you during 2005, at least line 7 shows
4 it's \$56,789. Is that all relating to H & R Block?

5 A. Correct.

6 Q. So between 2004 and when -- is that
7 reporting Medicare wages, the \$56,000, or is that --
8 that would be what would be on your W-2, the \$56,789
9 would be from the Medicare box?

10 A. I believe so. My wife does the taxes, so
11 I'm not sure.

12 Q. Well, if that is the case, and we can --
13 between 2004 and 2005, your earnings at H & R Block went
14 from \$123,000 to \$56,788; is that correct?

15 A. Correct.

16 Q. And so you were employed by H & R Block
17 during the entire year of 2005, were you not?

18 A. I was.

19 Q. Okay. And is that one of the reasons that
20 you didn't include --

21 ARBITRATOR: I don't see that. I see on
22 the --

23 MR. KANE: Line 7.

24 ARBITRATOR: -- record of 9, Number 9 in
25 his -- yeah. I see that in 2003, his earnings -- his



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

200

1 taxed -- the tax -- I'm not sure what's the difference
2 between the Social Security earnings and the Medicare
3 earnings, but the higher number is \$98,000.

4 MR. KANE: I was referring to 2004. If I
5 said 2003, I misspoke. And I'm comparing 2004 with
6 2005.

7 ARBITRATOR: And 2004 was \$87,900, or
8 121 --

9 MR. KANE: \$123,751.21.

10 MR. SHAFFER: I believe the difference is
11 Social Security earnings top out at some level; right?

12 ARBITRATOR: Right, yeah.

13 MR. SHAFFER: It's considered Social
14 Security.

15 BY MR. KANE:

16 Q. So taking that, I think you're correct on
17 that. Your income, your earnings at H & R Block went
18 from \$123,000, approximately, in 2004 to \$56,788 in
19 2005; correct?

20 A. That's correct.

21 Q. And so even though you couldn't find your
22 W-2, you decided to cut and paste this Exhibit 9 so it
23 wouldn't reflect your 2005 earnings from -- and what
24 you've presented to the panel, you determined not to
25 show them what you had earned for 2005, \$56,000?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

201

1 A. I already provided other information. This
2 thing is 90 pages long. I thought of ways to not
3 duplicate information.

4 And if what you're getting at is my income
5 dropped from 2004 to 2005, I'd say that's absolutely
6 true. There's variables in the market, there's payout,
7 there's different variables involved. If you look at my
8 earnings over time, there's been incredible volatility,
9 which I think is probably experienced by most
10 stockbrokers.

11 Q. Absolutely.

12 A. What's the point?

13 CHAIRMAN: We understand there was a drop.

14 A. That's part of the reason I accepted the
15 position at Wells Fargo or looked into the opportunity
16 at Wells Fargo.

17 BY MR. KANE:

18 Q. So when you came up with your average when
19 you testified yesterday, I'm not sure if you were using
20 a ten-year average or a five-year average. But I
21 believe you testified that based on Tab 9, that's what
22 you were going off of, that your ten-year average was --
23 of earnings was approximately \$91,000. Do you recall
24 that testimony yesterday?

25 A. That is absolutely correct. And my



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

202

1 ten-year average went from 2009 to 1999 and included
2 this amount. If you'd like, we can simply calculate the
3 ten-year average again right now with the information,
4 the ten-year average included this year.

5 Q. Although it's not on Exhibit 9?

6 A. There's no -- there's no averages there,
7 no.

8 Q. Nor is there the 2005 figure there?

9 A. Because I had already provided that
10 information on your demand.

11 CHAIRMAN: All right. We understand the
12 point that each of you is making. Let's move on.

13 BY MR. KANE:

14 Q. Going back to Tab 9, when you talk about
15 1993 to 1999, that was while you were at BAI; is that
16 correct?

17 A. Bank of America Investment Services; right.
18 And that average is \$140,000 a year, which I did not use
19 in my analysis.

20 Q. And the 1999 figure of \$222,252 is the
21 highest within that period of time of '93 to '99;
22 correct?

23 A. Yes, it is.

24 Q. And in 2000 -- so would you agree that the
25 market conditions that existed in 1999 are substantially



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

203

1 different than the market conditions that existed in
2 2008 while you were employed at Wells Fargo?

3 A. Definitely. And different than the market
4 conditions in 2005 when I had earnings of approximately
5 \$60,000, which are also included in that average.

6 Q. So these fluctuations are at least in part
7 due to fluctuations in market and economic conditions;
8 correct?

9 A. Uh-huh.

10 Q. You have to answer verbally.

11 A. Yes, they are.

12 Q. And to attempt to extrapolate those out, an
13 additional ten years as you have done here, really
14 amounts to speculation. Because you can't -- you can't
15 analyze what the market conditions are going to be. You
16 can't compare 2008 market conditions to 1999 market
17 conditions in attempting to establish damages because
18 it's all based on fluctuations of the market?

19 A. Well, a ten-year average is a ten-year
20 average. It's not based on speculation or fluctuation.
21 It's the actual results over a ten-year period. We
22 could a take a 15-year average or 20-year average,
23 whatever you wanted to do. I could have taken a higher
24 period of earnings which would have resulted in a higher
25 average. I took the last ten years.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

204

1 Q. So just so I'm clear, though, what
2 accounted in the difference in the reduction of your
3 income from \$123,000 in 2004 to \$56,000 in 2005?

4 A. Well, you know we're going back five years
5 at that point. And I can't tell you exactly, but I can
6 tell you that one of the reasons why I left H & R Block,
7 besides the fact that we were moving from Citrus
8 Heights, California, which is 20 minutes from my home to
9 a branch which is 45 minutes, is that I found that
10 working with the tax preparers at H & R Block, which is
11 what the financial advisers at H & R Block Financial
12 Advisers did, resulted in -- although they were great
13 people, there was a lot of very small referrals from
14 folks that didn't have a whole lot of investable assets.

15 And it even got into a situation where the
16 tax preparer would suggest that the people set up an IRA
17 to save money on taxes, and then I would come in and
18 explain different options to them and usually result in
19 a mutual fund sale. And then a couple months later,
20 they would call and need to take the money out of the
21 account because it turns out they needed the money.

22 I recruited a friend to H & R Block and he
23 told me "H & R Block, isn't that where poor people go to
24 have their taxes prepared?" I said no, there are
25 affluent people, but the bulk of the people that do



ESQUIRE
an Alexander Media Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

205

1 business at H & R Block are not high-investment type
2 availability of funds people. And that's why I was
3 having a problem. I was doing a lot of small tickets
4 for a lot of great people. Many of those people
5 transferred me with to Wells Fargo when I transferred.

6 Q. So the \$56,788 in 2005 at H & R Block, what
7 was the payout, the net payout on gross commissions that
8 you were getting from H & R Block?

9 A. That's part of the difference in earnings,
10 is that my payout was higher in the previous years as
11 part of an agreement when I came to H & R Block, as well
12 as the salary, there was a higher payout.

13 Q. My question is: What was your payout in
14 2005 that resulted in the \$56,788?

15 A. I don't know for sure. It was probably in
16 the low 30 percent range.

17 Q. Well, if you indicated you're trailing 12
18 was around \$217,500 --

19 ARBITRATOR: Where are you getting that?

20 MR. KANE: He testified to that yesterday.

21 BY MR. KANE:

22 Q. You testified that the trailing 12 months
23 of gross commissions before you joined Wells Fargo was
24 approximately \$217,500. 30 percent of that would be
25 \$65,250 and 25 percent of that would be \$54,375. So



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

206

1 it's somewhere in the range of 25 to 30 percent; would
2 that be accurate?

3 A. I would assume so.

4 Q. And as part of your offer at Wells Fargo,
5 they agreed to pay you 40 percent between June 15th of
6 2006 and December 31st of 2007, didn't they?

7 A. Yes, they did.

8 Q. So that was much higher than what you had
9 as your payout for 2005 at H & R Block; correct?

10 A. Yes, it was.

11 Q. And in addition, you testified that your
12 average earnings at Wells Fargo, you testified to this,
13 it's not in a document somewhere, I think you used the
14 figure \$78,000; is that correct?

15 A. That's in one of my documents. I believe
16 it's \$78,000.

17 Q. So that, at least in comparing an average,
18 you were there at H & R Block from all of 2007, all of
19 2008 --

20 A. No.

21 Q. Let me finish. I'm not done.

22 A. H & R Block.

23 Q. I misspoke. I do apologize for that. Let
24 me back up and restart it.

25 You were at Wells Fargo approximately six



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

207

1 months for 2006, two years, 2007, 2008, and 10 months
2 for 2009; correct?

3 A. Right.

4 Q. So that's where you came up with the
5 average of the \$78,000. But at least that average was
6 more than you had made in 2005 at H & R Block, the
7 \$56,788; correct?

8 A. That would be correct. But you're talking
9 about an average. So why not take in the 2004 numbers
10 of \$120,000 if that makes any difference. I don't see
11 what difference it would make what I made previous to
12 Wells Fargo.

13 Q. In addition, in 2008, you would agree that
14 in 2008, the economic conditions and market conditions
15 deteriorated during 2008 while you were at employed at
16 Wells Fargo?

17 A. Deteriorated. The markets crashed. We are
18 on the brink of a financial disaster, and Wells Fargo's
19 response was to pick up the pressure to brokers and
20 demand that they forecast the amount of commissions they
21 were going to make for the month, and increase the
22 emphasis on commission revenue without any concern for
23 the products or the client.

24 Q. So in connection with your claim for your
25 damages, you said that a million dollars and then you



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

208

1 said at least \$3 million, in using the figures that you
2 did, you didn't take into account changes in market
3 conditions during any of these years that you've used
4 for this average; is that correct?

5 A. Absolutely not correct. Because a ten-year
6 average includes periods of market volatility, good
7 markets and bad markets. And the -- what I suggested is
8 a ten-year average is absolutely my ten-year average.
9 That encompasses a period of good markets and bad
10 markets.

11 Q. Well, at BAI, what kind of territory did
12 you cover? What areas did you cover?

13 A. I had five branches at Bank of America.
14 And I -- yeah, five branches.

15 Q. And when you left Bank of America, you went
16 from Bank of America to Morgan Stanley; is that correct?

17 A. Correct.

18 Q. And you didn't duplicate any of your
19 earnings at least for your 2000 -- I'm going to
20 Exhibit 9, at Morgan Stanley in 2000, it's \$133,000,
21 2001, \$101,000 and then 91 and 98. And all of that is
22 while you were with Morgan Stanley; correct?

23 A. Correct.

24 Q. So your earnings went down when you
25 switched from Bank of America investments where you had



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

209

1 these five branches to Morgan Stanley; is that correct?

2 A. Sure did.

3 Q. And then you went from Morgan Stanley to
4 the H & R Block where your earnings -- we have already
5 covered that. What branch did you work out of for
6 Morgan Stanley?

7 A. Folsom.

8 Q. Did you have any other bank branches, or
9 other -- I'm sorry -- did they have any bank branches
10 that you covered like you did when you were with Bank of
11 America investments?

12 A. No. The Morgan Stanley model is the
13 typical brokerage model. You're in an office and you
14 bring your own clients, find your own clients.

15 Q. So it was in part referrals from five bank
16 branches that accounted for a lot of your production
17 from 1993 to 1999 while you were at Bank of America
18 Investments?

19 A. Yes. You know, that was perhaps the best
20 period in earnings for my brokerage career. And
21 obviously, in 20/20 hindsight, I should have stayed at
22 Bank of America.

23 Q. 1998 and 1999 were some of the best years
24 in the market, were they not?

25 A. Yes, they were.



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

210

1 Q. And in connection with these figures that
2 you came up with, in any way -- and the earnings that
3 you're comparing, prior earnings with the average of
4 \$78,000 from Wells Fargo, did you take into account in
5 your figures the fact that you received \$111,347 from
6 Wells Fargo as a loan when you joined the firm? Did you
7 take that into account in any of the figures you
8 provided the panel yesterday?

9 A. In the average income figures?

10 Q. No. In 2008, you received a loan of
11 \$111,347.

12 A. Uh-huh.

13 Q. Did you take that into account, that 111,
14 in connection with your any of your figures?

15 A. No.

16 Q. Okay. You received the proceeds of that
17 loan, did you not?

18 A. Yes, I did. And my Exhibit 1 shows that
19 that was listed as net pay.

20 Q. I understand?

21 A. By Wells Fargo.

22 Q. Now, if you would, please, I'm going to
23 take you back to the back of your book, Met Life. It
24 will be all the way -- it will be the first Met Life
25 document, October 23rd of 2008. Let me know when



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

211

1 everybody gets there.

2 CHAIRMAN: I've got it. It's about a
3 quarter inch.

4 MR. KANE: And there's several, but this
5 one is the October 23rd, 2008.

6 ARBITRATOR: What's at the bottom.

7 MR. KANE: It doesn't have anything at the
8 bottom, unfortunately.

9 ARBITRATOR: I've got it.

10 CHAIRMAN: Okay.

11 BY MR. KANE:

12 Q. Thank you. And before I get to that, I'm
13 glad everybody is there. Are you there Mr. Shaffer?

14 A. It's dated November 25th?

15 Q. October 23rd, 2008. I think it's the first
16 one. Before I ask, keep that out in front of you. But
17 before I ask you the question, you're aware, are you
18 not, that the Bank of America Investments' model has
19 changed since you left Bank of America. There are no
20 more referrals from bank branches.

21 A. No, I'm not.

22 Q. You're not aware that Bank of America
23 acquired Merrill Lynch and it's now operating as Merrill
24 Lynch?

25 A. I think I might have heard that. But I had



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

212

1 not heard about not referring customers to banks and
2 branches.

3 Q. Just so we're clear, Met Life was the
4 insurance carrier that handled the short-term and the
5 long-term disability at Wells Fargo; correct?

6 A. I assume so.

7 Q. And just so we're clear, as it relates to
8 this, this letter, as it indicates here, was regarding
9 your request to Met Life for a short-term disability
10 claim. And it was Met Life that says, "Your claim is
11 being denied as the information provided does not
12 support an inability to work starting on September 22nd
13 of 2008."

14 In this letter -- that was the
15 determination made by Metropolitan Life Insurance
16 Company; is that correct?

17 A. Correct.

18 Q. Okay. And if you will go to the next
19 page -- oh, let's go to the fourth paragraph down.
20 Their conclusion was based on the medical documentation
21 on file, that there is no medical support, no medical to
22 support your inability to work starting on
23 September 22nd, 2008.

24 There is no indication that you are having
25 impairments of a severity or frequency to preclude



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

213

1 working full-time, therefore the short-term disability
2 benefits are denied.

3 That was a determination made by
4 Metropolitan Life Insurance; correct?

5 A. Correct. And I sent a letter to Wells
6 Fargo Employee Benefits Department asking for their help
7 with this issue and never heard anything back.

8 Q. And they also conclude that based on the
9 lack of clinical findings to support your inability to
10 work full-time, your short-term claim was denied;
11 correct?

12 A. Right.

13 Q. And you appealed that, did you not?

14 A. I appealed that because the information I
15 have and I provided here recommended that I take time
16 off by two different physicians.

17 Q. Okay. Let's go to the next Met Life letter
18 that's dated November 25th of 2008. Let me know when
19 you get there.

20 A. You'll notice when we get there, there's a
21 medical certification form signed by a physician,
22 Dr. Lawson, that says it is necessary for the employee
23 to be absent from work for treatment. And the box is
24 marked yes. That's what I didn't understand and asked
25 for clarification of. And I never received any kind of



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

214

1 a response.

2 Q. Well, you received a response from Met Life
3 on November 25th of 2008, did you not?

4 A. Right. But I tried to take this to Wells
5 Fargo away from Met Life and ask for their help on this
6 issue.

7 Q. And on this November 25th, 2008, letter
8 that you received from Metropolitan Life, they told you
9 that they completed their review of the denial of your
10 claim and for the reason -- let me finish my question,
11 if you would, please.

12 And for the reasons that they state forth,
13 they upheld their decision to deny benefits upon the
14 appeal review that they did, correct, in their letter?

15 A. Correct.

16 Q. And if you go to the next page of the
17 November 25th letter, they even advised you in this
18 first full paragraph, "In an effort to provide you with
19 a thorough and fair review, we had our entire claim file
20 reviewed by an independent physician consultant board
21 certified in internal medicine." That's what they told
22 you; correct?

23 A. Correct.

24 Q. And the consultant that they hired reviewed
25 all of the information from your family practitioners



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

215

1 that you were referring to; correct?

2 A. Correct, I guess. I don't know.

3 Q. That's what the letters says, anyway?

4 A. That's what the letter says.

5 Q. And they said that the consultant concluded
6 that the medical information did not support any
7 functional limitations beyond September 22nd and
8 reaffirmed the denial of your claim; correct?

9 A. Which I could not understand. Because I
10 had not only Dr. Lawson's statement that I needed to
11 take time off work, but another of my doctors that I
12 could find is Dr. Orwanis's original recommendation to
13 take time off work. I found all that dumbfounding.

14 Q. In any event, all of those determinations
15 were made by Metropolitan Life Insurance Company, not
16 Wells Fargo; correct?

17 A. Well, right at the bottom of the page, it
18 says "Wells Fargo Company", which is where I directed it
19 to. And on the first page of this document --

20 Q. Mr. Shaffer, listen to my question. All of
21 these letters of denial is from Metropolitan Life
22 Insurance, not from Wells Fargo; is my statement
23 correct?

24 A. I'm not sure. It says "Metropolitan Life"
25 on the top, but then it says "short-term disability,



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

216

1 Wells Fargo and Company". I was getting the disability
2 benefits through Wells Fargo. And I didn't think I was
3 responsible for forcing my Kaiser physicians -- and I
4 would say that Kaiser is administratively challenged. I
5 didn't think it was my job to force the Kaiser
6 physicians to provide the information to them in a
7 timely basis.

8 They he even commented that they provided
9 information and did not hear back from the Kaiser
10 physicians. It says on the first paragraph on the
11 page --

12 ARBITRATOR: Excuse me. I think I need to
13 intervene a little bit here. Wells Fargo is not in the
14 insurance business. They hired Met Life to do all of
15 their disability insurance. Everything goes through
16 them..

17 MR. SHAFFER: I understand.

18 ARBITRATOR: So they can only go by what
19 Met Life says.

20 MR. SHAFFER: Again, I wrote a letter to
21 this address at the bottom here and asked for their help
22 in getting these records from my Kaiser physician.

23 MR. KANE: Mr. Chairman, at this time, I'd
24 like to move Claimant's Exhibit 17 into evidence.

25 CHAIRMAN: Any objection, Mr. Shaffer?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

217

1 MR. SHAFFER: Can I make one final comment
2 regarding this last issue?

3 MR. KANE: Wait. I don't have any
4 questions pending.

5 CHAIRMAN: Right. So the question is: Do
6 you have any objection to moving into evidence your 1040
7 for the year 2005, this document?

8 MR. SHAFFER: No. It's just that I'd like
9 to make one final comment in regard to this whole issue.

10 (Claimant's Exhibit 17 was marked for
11 identification.)

12 CHAIRMAN: I'm going to -- what business
13 are you talking about?

14 MR. SHAFFER: I just want to make one final
15 comment.

16 CHAIRMAN: With regard to what.

17 MR. SHAFFER: With regard to Met Life and
18 the disability payment.

19 CHAIRMAN: All right, proceed.

20 MR. SHAFFER: You'll notice that there are
21 no e-mails or letters of complaint or anything. After
22 this decision was made, I dropped it and I went back to
23 work and I did the best job I could.

24 CHAIRMAN: Okay. Thank you.

25 MR. KANE: Mr. Chairman, I may be done with



ESQUIRE
an Alexander Galt Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

218

1 my examination of Mr. Shaffer. But could we perhaps
2 take our morning break now. It's a little earlier than
3 we would, but I could consult with my client.

4 CHAIRMAN: Absolutely.

5 UNIDENTIFIED SPEAKER: Off the record.

6 (Thereupon, a break was taken.)

7 CHAIRMAN: All right. You may proceed,
8 Mr. Kane.

9 MR. KANE: Thank you, Mr. Chairman. I
10 don't have any further questions of Mr. Shaffer.

11 CHAIRMAN: Next witness?

12 MR. KANE: Ms. Mortensen. I don't think
13 she's been sworn.

14 (Witness sworn.)

15 CHAIRMAN: And state your full name,
16 please.

17 WITNESS: Mary Mortensen. It's
18 M-o-r-t-e-n-s-e-n.

19 MARY MORTENSEN,
20 called as a witness on behalf of the Claimant, being
21 first duly sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. KANE:

24 Q. Ms. Mortensen, why don't we start -- what
25 is your current position with Wells Fargo? Tell the



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

219

1 panel.

2 A. My current title is called branch
3 administration manager.

4 Q. And what office is that out of?

5 A. I'm located in the Roseville office. My
6 region covers Sacramento and Roseville.

7 Q. Why don't we start with you just giving the
8 panel a brief description of your background in the
9 securities industry? And speak up so we can --

10 A. I started in the business in 1979. I was
11 in high school. And with Merrill Lynch working changing
12 the numbers, you know, doing the quotes on the
13 whiteboard, and moved up into cashiering, wire operator
14 position.

15 I then moved with Merrill here to San
16 Francisco when they opened up their first regional
17 operations center.

18 Q. When was that?

19 A. It was about 1981, I believe, and quickly
20 went into a lead supervisor role in the margins
21 department and securities received department. I did
22 that for a couple of years. And then Merrill sent me to
23 New York working with their audit program.

24 Q. Are we talking '82 or '83?

25 A. About '83, I believe.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

220

1 Q. And what did you do in working with Merrill
2 Lynch's audit program?

3 A. I was responsible for doing their internal
4 examinations nationally. At that time, Merrill's audit
5 program was a national program, and I flew 48 weeks out
6 of the year just traveling to all the different branches
7 performing their internal examination.

8 Q. Okay. How long were you in that position?

9 A. Just a couple of years. Merrill only
10 allowed you to do it for a couple of years due to
11 burnout.

12 Q. What was your next position?

13 A. I left Merrill because I wanted to come
14 back to Sacramento, and there wasn't a position
15 available. I came back and actually left the business
16 for about a couple -- probably less than a year. I did
17 401k administration.

18 Then shortly after that, I joined A.G.
19 Edwards as a sales associate.

20 Q. When was that, approximately?

21 A. I'm thinking --

22 Q. Ballpark?

23 A. Like '85, '86.

24 Q. Okay. And how long were you with A.G.
25 Edwards as a sales associate?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

221

1 A. Maybe just a little over a year. Then I
2 was hired by Bateman Eichler Hill Richards as an
3 operations manager in their Sacramento office.

4 Q. Okay. And how long were you with Bateman
5 Eichler?

6 A. I was with Bateman Eichler given all the
7 name changes that they had gone through, Dekemper and
8 Everen, up until I think '91. And I actually received
9 my 7 licenses while I was with Bateman in 1987.

10 Q. And what did you do for Bateman Eichler
11 until 1991?

12 A. I was responsible for working doing all the
13 HR management with the sales associates, all the
14 operations personnel, handling -- handling the
15 operations issues that were escalated that needed help
16 with, helping the branch manager gather documents for
17 customer complaints of that nature.

18 Q. And after you left Bateman Eichler in 1991,
19 where did you go next?

20 A. I went to Morgan Stanley. And I went there
21 working as the admin to the branch manager. And my
22 function was really to continue working with all the
23 sales assistants. I helped him in his monthly reporting
24 for active account reports, just various things. And I
25 was also responsible for work with all the trainees.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

222

1 So from the beginning of performing
2 those -- those old tests that they had to take and then
3 helping them through their testing until they actually
4 went to New York for their sales training.

5 Q. And how long were you in that position with
6 Morgan Stanley after 1991?

7 A. A couple of years. And I decided that if I
8 could train brokers, that I could probably be one. So I
9 went to Payne Weber as an investment executive.

10 Q. About 1993?

11 A. It was about 1993.

12 ARBITRATOR: Are you saying you got a
13 Series 8.

14 A. No, no. It was still my 7. I had my 7 and
15 my 63. Then I became a broker, financial adviser at
16 Payne Weber.

17 BY MR. KANE:

18 Q. So a financial adviser conducting a general
19 retail securities business?

20 A. Correct.

21 Q. Not in any supervisory role at Payne Weber?

22 A. Correct.

23 Q. How long were you a financial adviser at
24 Payne Weber where you didn't have any supervisory --

25 A. Just a few years. I quickly learned that



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

223

1 there's right-brained and left-brain type of people,
2 people who are more adept to sales and people more adept
3 to administration. I was definitely an administrator,
4 not a salesperson.

5 Q. Where did you go after Payne Weber?

6 A. For a very short stint, I think I was still
7 holding onto the fact that I might be able to do sales.
8 I went in as a junior partner for only about six months
9 with Edward Jones.

10 And at that time, I started going through
11 some personal -- I was going through a divorce and it
12 was just too hard to stay focused. And I needed a
13 steady income.

14 Q. So when did you first --

15 MR. KANE: I'm sorry. Do you have a
16 question.

17 ARBITRATOR: I wondered when you joined
18 Payne Weber. What year was that?

19 WITNESS: I think it was in 1992 or '93.

20 ARBITRATOR: And then Edward Jones.

21 A. Then Edward Jones for just a real short
22 period of time. Then I went over to Great Western, and
23 that was the first time that I kind of went into what I
24 would consider a bank program.

25 BY MR. KANE:



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

224

1 Q. So kind of describe -- approximately, I
2 know we're dusting cobwebs off, but approximately what
3 year was that?

4 A. I think it was around 1995, '94, '95.

5 Q. And what position did you go into at Great
6 Western?

7 A. That was what you called an RSA position,
8 or regional support administrator. And it's basically
9 helping, again, the regional manager with compliance
10 functions. I got my 24 license there. And reviewing
11 some of the switches and increased trade approvals and
12 things like that.

13 Q. And you said Great Western was the first
14 time you went into a bank mode. Kind of briefly
15 describe what you meant by that when you made that
16 statement.

17 A. Most of my -- actually all of my prior
18 experiences have been with what I consider a wire house
19 model, which would be your standard Morgan Stanley,
20 Merrill Lynch, Payne Weber where you have to actually go
21 out and identify your own clients and build your own
22 book. The bank program, you have financial advisers
23 actually sitting in the branches where you received
24 referrals.

25 Q. But you could also -- you would also be



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

225

1 developing your own?

2 A. You could absolutely still be developing
3 your own book. At that point, I couldn't understand why
4 everybody didn't do that. Because here you're getting
5 some free referrals. And I remember when I was with
6 Payne Weber, that was back in the days when you were
7 smiling and dialing. And, you know, 250 calls a day, 50
8 contacts a day. It was crazy.

9 And so here, you build relations with the
10 bank personnel, with the bankers there, and you would
11 receive referrals that they would provide to you.

12 MR. SHAFFER: Can I object?

13 CHAIRMAN: To his question?

14 MR. SHAFFER: To this whole -- I don't
15 understand how any of this has any pertinency to the
16 items we're discussing.

17 CHAIRMAN: That's really not up to you to
18 decide. We'll decide whether the testimony is relevant
19 and what weight we will give to it. Mr. Kane may ask
20 questions.

21 BY MR. KANE:

22 Q. And, I'm sorry, we were -- have you already
23 described what you did at Great Western?

24 A. Yes.

25 Q. So how long were you in that position at



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

226

1 Great Western?

2 A. A couple of years. And Great Western was
3 subsequently bought out by Washington Mutual and my
4 position was going to be eliminated. And at that time,
5 I was approached by Wells Fargo to join them.

6 Q. And what year are we talking about?

7 A. 1997.

8 Q. And in 1997, did you join Wells Fargo?

9 A. I did.

10 Q. Okay. And where were you located in '97
11 when you joined Wells Fargo?

12 A. We were in Sacramento in the Sacramento
13 area, a smaller office. Wells Fargo was really just
14 starting there, really developing their program.

15 Q. And in 1997, when you joined Wells Fargo,
16 what was your position at that time?

17 A. As an operations manager.

18 Q. Let's just take 1999 -- so we'll start with
19 '97 and we'll just kind of go forward. What were your
20 duties as an operations manager in that Sacramento
21 office?

22 A. To work with all the financial advisers
23 relative to their, you know, escalated operations issues
24 that they may have. I worked with the regional sales
25 manager in pulling together documents and for customer



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

227

1 complaints. I did a pre-review of the accurate account
2 reports and trade blotters.

3 Q. And how long were you in that position as
4 operations manager?

5 A. For I'd say about three years. And then
6 Wells Fargo developed this new program or this new
7 position call the branch administration manager program.
8 And they did that in an effort to try and facilitate
9 support to the regional sales managers so that they had
10 the opportunity to train and coach their financial
11 advisers.

12 And there would be someone who was more
13 geared towards what I would consider compliance. And so
14 at that time, I did all the pre -- all the trade
15 reviews, the approvals of the switch letter letters,
16 approval of the annuity transactions. And I also
17 supervised, of course, sales associates.

18 Q. So that started -- and that was a title
19 called branch administrative manager; correct?

20 A. Correct.

21 Q. And there's no dispute, Mr. Shaffer worked
22 for Wells Fargo from June 15th of 2006 to October 1st of
23 2009. During that time period, from 2006 until
24 October 1st of 2009, did you always have the position of
25 branch administrative manager that you just described?



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

228

1 A. Yes, I did.

2 Q. Did your duties change at any point between
3 2000 and October of 2009?

4 A. No.

5 Q. Let's take the period when Mr. Shaffer was
6 employed, June of 2006 to October of '09. In June of
7 2006, were you the branch administrative manager that
8 had -- would have responsibility relating to
9 Mr. Shaffer?

10 A. Yes, I was.

11 Q. Okay. What office did you work out of?

12 A. The Roseville office.

13 Q. The Roseville office. And how long had you
14 worked out of the Roseville office?

15 A. We moved into the Roseville office in 2001,
16 I believe.

17 Q. And when you started in June of 2006, what
18 area did you cover as the branch administrative manager?

19 A. I covered the Roseville -- what I would
20 consider east of Sacramento. So from Carmichael on up
21 through Folsom, which would have been Ken Shaffer's
22 branches.

23 Q. And did that stay the same through the
24 period of time he was employed through October 1st of
25 '09?



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

229

1 A. Yes.

2 Q. And during that period of time,
3 approximately how many registered representatives were
4 you the branch administrative officer for performing
5 duties you described?

6 A. I'm going to guess. It was probably maybe
7 43.

8 Q. It fluctuated?

9 A. It fluctuated constantly.

10 Q. But in the area of 40?

11 A. Yeah.

12 Q. And you were located in the Roseville
13 office, what -- where was Mr. Shaffer located during
14 this period of time?

15 A. Mr. Shaffer was in the Folsom office.

16 Q. And did he have more than one office or
17 branch?

18 A. He ended up with Carmichael as well.

19 Q. Let's make sure we understand. When we've
20 heard Folsom, we've heard it called the Empire Branch?

21 A. The Empire.

22 Q. What is that?

23 A. We call them stores. So if you ever hear
24 me referring to a store, it's just like normal stuff
25 coming out of my mouth. It was one of our store



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

230

1 locations, which means it was an actual bank branch
2 located in the Folsom area.

3 Q. And at some point, he also handled the
4 Micron branch?

5 A. He did.

6 Q. Where was that located?

7 A. That was located out in the -- closer to
8 the downtown Sacramento area. And it was (inaudible).

9 Q. Do I understand correctly that of the 40 or
10 so financial advisers, they all worked out of different
11 bank branches?

12 A. They did.

13 Q. Now, we heard yesterday Mr. Shaffer
14 referred to some handwritten notes. It's not an exhibit
15 number, but it's this far in from the end.

16 ARBITRATOR: Of his?

17 MR. KANE: Of his documents. It's
18 August 28th, 2009 handwritten notes. We'll wait until
19 everybody gets there.

20 ARBITRATOR: August 14th.

21 MR. KANE: August 28th. It's the one behind
22 August 14th. It's right behind it.

23 CHAIRMAN: Is it before?

24 MR. KANE: It's closer to the end.

25 CHAIRMAN: It looks like -- is it after the



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

231

1 Met Life stuff?

2 MR. KANE: It's before the Met -- it's
3 before all the Met Life stuff. It's right before all
4 the Met Life stuff.

5 CHAIRMAN: Okay.

6 MR. KANE: By a couple pages.

7 ARBITRATOR: 8/28?

8 MR.. KANE: Yes.

9 CHAIRMAN: Got it.

10 BY MR. KANE:

11 Q. There was a -- Mr. Shaffer made reference
12 to an entry at the bottom of this page that said -- and
13 I think he said these were Ms. Krug's handwriting. Just
14 for the panel, who was Ms. Krug at this period of time
15 in August of '09?

16 A. She was the regional sales manager.

17 Q. Okay. And he indicates here that the notes
18 say "work his book by deciding which clients deserve a
19 quote, deeper drill". And then it says "5 to 10
20 clients". And he didn't know what deeper drill -- he
21 wasn't sure what deeper drill meant. Have you heard
22 that referenced before?

23 A. Yes.

24 Q. And tell the panel what this reference is
25 in regards to?



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

232

1 A. One of the things about working with the
2 private bank is that you have the availability of some
3 of the -- some of the things that the private bank has.
4 Which means that when a deeper drill -- and deeper die
5 drilling means that you do more cross-referrals.

6 So find a client who has the ability who
7 can benefit from some of the advantages of the private
8 bank, either by working with a private banker, that he
9 deposits -- you know, if there is loan needs, insurance
10 needs, whatever those are. But really diving deeper
11 into the book to see how we can benefit the clients in
12 order to bring benefit to the clients.

13 Q. As part of your function as the branch
14 administrative manager, do you have occasion to review
15 any exception reports that are generated on the firm's
16 system?

17 A. That used to be a big part of my job, was
18 the review of the broker audit reports.

19 Q. Okay. So let's make sure we're in the same
20 time period. Let's take the time period of 2009 up
21 until October of 2009. That's when Mr. Shaffer was no
22 longer with the firm. Was that part of your function in
23 2009?

24 A. It was.

25 CHAIRMAN: To do what?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

233

1 BY MR. KANE:

2 Q. Good question. Why don't you tell the
3 panel what that entailed?

4 A. So the first thing I did every morning when
5 I came in was to look at the trade blotter.

6 CHAIRMAN: What's that?

7 WITNESS: The trade blotter is the trade
8 sections placed the day prior. So that was driven off
9 of a system that we had called broker audit. It was a
10 third-party system that we had purchased to do our
11 supervisory reviews of the trading activity of the prior
12 day.

13 So the first thing I would do, obviously,
14 would to come in and take -- and look at all the trades
15 that had taken place and review those trades for
16 suitability issues, for anything that might stick out.

17 CHAIRMAN: For what area?

18 WITNESS: For the Sacramento Roseville
19 area.

20 CHAIRMAN: For all the trades?

21 WITNESS: All the trades. I have to step
22 back. I have to be honest with you, there was a period
23 where -- I don't remember the period. The position was
24 too overwhelming. We had also hired another branch
25 manager, administration manager. So you'll hear me



ESQUIRE
an Alexander Galloway Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

234

1 refer that I was working in the Roseville office.

2 This other branch administration manager
3 was responsible for the Sacramento office. So
4 therefore, my responsibility kind of split and I was --
5 at that point, I was dealing with about 23 financial
6 advisers so that we could really do more focused review
7 of some of the trade activity that had taken place.

8 BY MR. KANE:

9 Q. Now, you referred to something called
10 broker audits. Why don't you describe for the panel
11 what a broker audit was. And let's take the time period
12 at issue here, September, October of '09.

13 A. Again, so broker audit was the trade
14 blotter. There were two pieces to broker audits. The
15 first was the entire trade blotter. The second piece
16 was what was we call the exception blotter. The
17 exception blotter would highlight things that we needed
18 to really look at. So those would be potential switches
19 and potential large trays, you know, and of course in
20 this case, the excess commissions.

21 So this is all noted on this exception
22 report that I would pull up in the morning to, one,
23 identify whether or not I had pre-approved a switch
24 letter.

25 CHAIRMAN: What's a switch?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

235

1 A. Where a financial adviser moves a client's
2 position from one package product into another package
3 product generating a commission.

4 BY MR. KANE:

5 Q. Like mutual funds?

6 A. Like mutual funds. It's typically mutual
7 funds. When I say "packaged product", it's also
8 required for unit investment trusts. It's also required
9 for annuity transactions.

10 Q. Okay. Now, before we get into this,
11 describe how -- in September, October of '09, how the
12 order entry system worked at Wells Fargo. In other
13 words, what -- if a broker solicits a customer to
14 purchase or they intervene, tell the panel what the
15 process was.

16 A. Well, we, again, purchased a -- or we use a
17 third-party system called Thompson 1. Thompson 1
18 provided us with all the market data. It had a market
19 data sheet.

20 It also had all the account information so
21 you could go into your account workbook, your rec
22 workbook, and then there was an order entry tab in that
23 as well-driven down between mutual funds and equity
24 transactions.

25 And then we had a separate -- we had a



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

236

1 separate function for bond desk, which is more of our
2 fixed income trades.

3 Q. Let's take an equity.

4 A. An equity would be off the Thompson 1, and
5 if you wanted to buy or sell a position, you would go
6 into the order entry screen on the Thompson 1 system to
7 place those trades.

8 Q. And was there -- when the broker placed the
9 trade, how was the -- on the Thompson system, how was
10 the commissions determined in the normal course of
11 business?

12 A. Well, it's a third-party system. Wells
13 Fargo provides the third-party company our commission
14 schedule. It's all downloaded in there. So when a
15 financial adviser placed a trade, the commissions would
16 populate with whatever our standard commission schedule
17 was.

18 Q. And could the broker deviate from -- could
19 he override the system?

20 A. You have the ability to override the
21 system. However, in the overriding of a system,
22 particularly if you do an upward movement, it
23 requires -- there was a soft edit to it.

24 Q. I'm sorry. What?

25 A. What I call a soft edit, where it might



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

237

1 say, "Okay. Hold on. Just FYI, this is happening." If
2 you're doing a large trade, it would say, "Hold on.
3 You're placing a trade for this. Are you sure you want
4 to continue?" And you can -- all you had to do is hit
5 enter and it would go in and verify the trade screen.

6 Q. Okay. So in connection with your position
7 as the branch administrator, did a situation arise from
8 the broker audit exception screen that related to
9 Mr. Shaffer?

10 A. Yes.

11 Q. Okay. What I'd like you to do, you should
12 have that white notebook over there in front of you.
13 And I'm going to ask you -- before I get to the
14 notebook, when the broker audit exception screen popped
15 up, did you have -- what was your practice? When that
16 showed a trade that met any of the criteria that you
17 mentioned, what, if anything, did you do?

18 A. Well, I always cut and pasted that page, so
19 I would copy and paste that page onto an e-mail and send
20 it out to the financial consultant to ask for a reason
21 why. So if it was a large, you know -- if it was
22 something that I didn't receive approval on, I would
23 send them an e-mail saying, "Where is the approval? Did
24 we miss it?"

25 In Ken's case, I sent him an e-mail saying,



ESQUIRE
an Alexander Galla Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

238

1 "What happened here? Why did you charge more than what
2 the allowable commission was?"

3 Q. Okay. Now, if you would, please, go to the
4 white notebook and I'd like you to go to Tab 10. And go
5 to the bottom -- what I'm going to ask you to look at is
6 the bottom of the first page, which is your e-mail to
7 Mr. Shaffer dated September 29th at 3:08 p.m. and the
8 top -- and the second page. So tell the panel what this
9 document is as it relates to what you've explained to
10 us.

11 A. Well, this is an e-mail that I sent to Ken
12 saying that I was doing a trade review on a trade that
13 he had done the prior day. And the trade review was
14 excess commissions. And I asked him to let me know why
15 he had entered a flat dollar commission amount in excess
16 of what the normal commission would be.

17 Q. So let's go through --

18 ARBITRATOR: I'm sorry. I'm not seeing
19 that wording.

20 MR. KANE: It's W20, the page W20.

21 ARBITRATOR: No. What she was just --

22 WITNESS: If you look at the top of the
23 line --

24 ARBITRATOR: That says, "Kelly, I thought I
25 would share this with you."



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

239

1 BY MR. KANE:

2 Q. No. It's to Ken. "Please advise why you
3 entered a flat commission amount in addition to the
4 normal." Let's go to the first box, the Eden Vance.
5 Walk us through what you're showing and what it is
6 you're seeing on the screen and what it's indicating to
7 you?

8 A. Well, it's telling me that he solicited a
9 closed-end fund, which was the Eden Vance Tax-Managed
10 Global Diversified Equity Income Fund. It tells me what
11 price he purchased it at and what commissions he charged
12 on it.

13 Q. So just as we're going across on it, it
14 says "commission \$495". What does that represent?

15 A. That represents the commission that he had
16 entered into the system.

17 Q. When it says "compared value, \$368.69",
18 what does that reference?

19 A. Can I tell you, I'm not quite sure.
20 Because when I look at the commission amount, that's
21 what I would look at. The compared value typically
22 offer some sort of commission schedule. But it wasn't
23 anything that I would look at.

24 I would look at here a commission in excess
25 of equities. It clearly flags it. The system pulls off



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

240

1 of the commission schedule what they think the
2 comparative value would be, what that's derived from, I
3 couldn't say. But that's how it notifies me that there
4 was commission in excess.

5 ARBITRATOR: Just for clarifications, you
6 had mentioned that the Thompson 1 had an opportunity for
7 the bank to enter the commissions into the Thompson 1.

8 WITNESS: So what that is, it's not the
9 bank -- well, Wells Fargo Investments provides a
10 commission schedule through the technology group to
11 Thompson 1, and that's what is used when we go through
12 the order entry system. Because if you can imagine,
13 Thompson 1, many different firms use Thompson 1. And
14 many different firms have different commission
15 schedules.

16 ARBITRATOR: But you did mention that this
17 compared value was derived from a commission schedule.

18 WITNESS: I believe that it was derived
19 from a commission schedule, but I'm not certain.

20 ARBITRATOR: So you're not certain that
21 this was the commission that was entered by Wells Fargo
22 into the Thompson 1?

23 MR. KANE: Answer the question. I'll
24 clarify with the document.

25 WITNESS: The reason why I'm not sure is



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

241

1 because at the time that I flagged this in, there's
2 another system on Thompson 1 that is what we call a
3 commission calculator. So that's a system that many of
4 the sales assistants and financial advisers will use if
5 they're speaking with a client.

6 That client will say, "How much is this
7 going to cost me?" They can go into the commission
8 calculator saying this is the approximate dollar amount
9 that it will cost you. It will pull from what our
10 commission schedule is and show that commission dollar
11 amount. So when I ran the commission calculator against
12 the trades for Ken, it was a different amount than this.

13 CHAIRMAN: Than this.

14 A. Than the compared value. So I go off of
15 what the commission calculator states because I know
16 that to be our commission schedule.

17 BY MR. KANE:

18 Q. So to clarify that, go to the document that
19 has the number W23. It's for the -- let's not do that
20 one. Let's do the one for the Eden. So let's go to the
21 document that has the page number W26.

22 So to kind of clarify, tell the panel what
23 this document is and how you use it in connection with
24 your review of this trade?

25 A. So with this, I took -- I was trying to



Toll Free: 888.486.4044
2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

242

1 determine what the commissions would -- should have been
2 off of our commission schedule. So that's kind of a
3 free form. I was able to put in that the quantity was
4 600 shares, that it was traded at \$12.29. It gave me
5 the principle amount and then it pulled our commission
6 schedule of \$197.74 along with our postage and handling
7 fee, which was standard, to give you a net amount of
8 \$7,576.76.

9 ARBITRATOR: My question is the maximum
10 grade area above that, what does that represent?

11 WITNESS: I couldn't tell you. I had
12 spoken with someone in our IT department trying to
13 figure that out. They said it was some sort of a system
14 glitch, that we weren't ever to look at that number,
15 that the low number was what was our actual commission
16 schedule was.

17 ARBITRATOR: I can guess what it is.
18 Because zero is the minimum and 690 is the maximum, so
19 the problem is a system function that you can't put in
20 more than the 690.

21 WITNESS: Yeah. I don't know.

22 BY MR. KANE:

23 Q. But just so we're clear, there's no doubt
24 in your mind that pursuant to the commission schedule at
25 Wells Fargo, the commission was supposed to be the



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

243

1 \$197.74?

2 A. Correct.

3 MR. SHAFFER: Objection.

4 CHAIRMAN: To what?

5 MR. SHAFFER: To the statement that
6 Mr. Kane just made. Because obviously, it says \$460 is
7 the maximum commission.

8 ARBITRATOR: \$690, you mean?

9 MR. SHAFFER: I'm sorry. I'm looking at
10 the first one. It says \$690 is the maximum commission.
11 I don't know that we can ascertain --

12 ARBITRATOR: We have ascertained what that
13 is. That's a system issue that Wells Fargo cannot issue
14 a commission higher than \$690.

15 MR. SHAFFER: But you realize it is
16 possible to charge a commission much higher than \$690.
17 If you had --

18 ARBITRATOR: But this system doesn't
19 operate that way?

20 MR. SHAFFER: Yes. This system would allow
21 any FC to enter an order saying Mr. Kane had 300 shares
22 of 3 Com stock, the commission might be very well be
23 \$1,500.

24 ARBITRATOR: Clearly there's issues here.
25 Because we've got an issue with the compared value. How



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

244

1 is an FC going to know which of these he is to use?

2 A. If you just enter the trade without putting
3 any flat dollar commission, if you just put in "I am
4 buying 600 shares out the market", and the market was at
5 \$12.29, when you go in to place the trade, it gives
6 you -- it gives you a pre-look at the order form.

7 ARBITRATOR: Sure.

8 A. It gives you an idea of what that
9 commission is.

10 BY MR. KANE:

11 Q. Would that then show the 194.74?

12 A. At that point, that would also allow the FC
13 to say, "You know what, I'm not comfortable charging
14 that amount. I want to charge less." They could at
15 that point discount the trade if they wanted to discount
16 the trade.

17 Q. What if the FC wanted to make an upward
18 adjustment?

19 A. I would say that I have never seen FCs make
20 upward adjustments, primarily because FCs have a really
21 hard time discussing what their worth is. Many FCs have
22 a problem talking about how they get paid. And it's
23 almost embarrassing at some points, you know.

24 It's my experience working with financial
25 advisers, the toughest conversations that they ever have



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

245

1 with their clients is what commissions they're charging
2 and what they earn on the specific transaction.

3 CHAIRMAN: Excuse me. Are you saying this
4 is the only time you've ever seen an upward commission?

5 A. Yes.

6 BY MR. KANE:

7 Q. You've seen discounts?

8 A. I've seen discounts right and left. I've
9 never seen this.

10 ARBITRATOR: Well, the discounts are not in
11 the best interest of the company.

12 A. You know, it depends. And I won't say
13 that. Because if it brings value to a client, if it
14 means that you're developing and deepening a
15 relationship by discounting a trade because you believe
16 that you're going to get more business later on, then --

17 ARBITRATOR: I understand.

18 WITNESS: Then that would make sense.

19 MR. SHAFFER: I have a question as well.

20 CHAIRMAN: You'll have an community.

21 MR. SHAFFER: I want Ms. Mortensen to
22 answer all of your questions. So if you have any
23 questions, please ask them.

24 BY MR. KANE:

25 Q. So the one for Eden Vance, go to Number 23,



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

246

1 which would be for the -- let's go all the way back to
2 20 and talk about the second trade that shows up there,
3 the V. Again, this is showing a solicitation of the
4 purchase and a flat commission of \$495. And we see that
5 compared value there as well.

6 So that was included in what you sent to
7 Mr. -- to Mr. Shaffer; correct?

8 A. I did not send this commission calculator
9 to him.

10 Q. No. I'm talking about Number 20 at the
11 bottom.

12 A. Yes.

13 Q. And that's also included in your e-mail?

14 A. Yes.

15 Q. And no matter what the compared value is,
16 we know that it's less than the flat fee of \$495?

17 A. Correct.

18 Q. And then if you go to Tab -- page 23, what
19 does this show?

20 A. This shows that the -- that our commission
21 schedule would have reflected a commission of \$169.47.

22 Q. When Mr. Shaffer entered the trade, would
23 this pop-up where he would know that the commission was
24 under the schedule where it was \$169.47?

25 A. Yes. If he entered it without -- because



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

247

1 he populated it with a flat dollar, it would have not
2 showed. If he would have just left it alone again, it
3 would have showed.

4 ARBITRATOR: My question to you is: If --
5 this is the e-mail that you sent him with the compared
6 value?

7 WITNESS: Yes.

8 ARBITRATOR: If he had entered the compared
9 value of \$368.69 in the first instance, \$336.58 in the
10 Nuvane (phonetic) instance, would it have triggered
11 your --

12 WITNESS: I don't know.

13 ARBITRATOR: Because this is the one you
14 sent to him.

15 WITNESS: This is the one. I sent it to
16 him because the system triggered it. I work off of the
17 tools and resources that are provided to me. This
18 obviously populated for a reason.

19 BY MR. KANE:

20 Q. We keep saying "populated". Just so
21 we're -- what do you mean by that? Showed up?

22 A. Well, yeah. It's not where I had to dive
23 into it or try and find it within the trade blotter. It
24 was on my exception blotter that when I'm -- when I do
25 our exception approves, I'm required to place notes in



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

248

1 the system as to either how I resolve the problem or
2 what happened, some sort of a note so that there would
3 be a trail for whatever reason to ensure that those
4 exceptions had been answered the way that the firm
5 required me to do so.

6 Q. Let's go to the actual order, unless you
7 have a question.

8 ARBITRATOR: But, again, what you saw that
9 triggered your concern was what you e-mailed him here?

10 WITNESS: Correct.

11 BY MR. KANE:

12 Q. And after you e-mailed him, is that when
13 you went to the commission calculator, you know, take
14 Number -- page 23, or where does that enter into the
15 process?

16 A. That's when I pulled and I -- at the point
17 that I started what I consider my investigative work as
18 to why, at that point, I pulled up the commission
19 calculator so that I would have an idea of what had been
20 charged versus what should have been charged.

21 Q. Now let's go to -- so we're clear, on page
22 22, W22 and we'll do the same thing for W25. But let's
23 start with W22, page number 22 in the lower-right-hand
24 corner. It's on --

25 ARBITRATOR: I just want to ask one more



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

249

1 question. I'm sorry to do this. What year did Ken join
2 the firm?

3 MR. KANE: '06, June 15th of '06.

4 ARBITRATOR: That's fine.

5 MR. KANE: Are you at page W22,
6 Ms. Mortensen?

7 A. Yes.

8 BY MR. KANE:

9 Q. Tell the panel what this document
10 represents.

11 A. I have the ability to go into what I call
12 the dark side. It's off of another system, what we call
13 data host, and pull up what the actual transaction
14 looked like and how it was actually entered.

15 Q. How the broker entered the trade?

16 A. How the broker entered the trade.

17 Q. What did this show you?

18 A. Again, it tells me that he was buying 400
19 shares of the JGT of the new E multi-currency. And then
20 if you look right above the description where it says
21 "CM", that stands for commissions.

22 Q. CM, so the 495?

23 A. Yeah. So that's how I was able to
24 ascertain that there was truly a flat dollar amount that
25 was placed versus a percentage. If you look directly to



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

250

1 the right where it says "P/C", if he would have
2 discounted the trade with a certain percentage, then
3 that percentage of the discount would be there.

4 Q. Now, is the CM, where it has \$495 on the
5 order ticket, does that typically have a number there?

6 A. No.

7 Q. Why not?

8 A. Because typically the financial advisers
9 just charge the normal commission schedule and therefore
10 it would be blank.

11 ARBITRATOR: It would be automatic.

12 A. It would be automatic, correct.

13 BY MR. KANE:

14 Q. So did you reach any determination or
15 conclusions as to whether he overrode the system in
16 order to put the \$495 there?

17 A. I could clearly tell that he overrode the
18 system and placed a flat-dollar amount.

19 MR. SHAFFER: Objection.

20 CHAIRMAN: Objection to the question? What
21 is your objection?

22 MR. SHAFFER: Her statement.

23 CHAIRMAN: No. You have an opportunity to
24 ask questions later and to make an argument.

25 BY MR. KANE:



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

251

1 Q. And would you go to the page that has the
2 W25? That's the same for the second trade. You have
3 this one, the Eden Vance trade, W25. And, again, is
4 this the order ticket for the second trade we're talking
5 about?

6 A. It is.

7 Q. And, again, your answers would be the same,
8 that normally that CM would not have the \$495 there, it
9 would be blank?

10 A. Correct.

11 Q. And this is another indication that he
12 overrode the system?

13 A. Correct.

14 Q. And then if you go back to page 23, what --
15 whose handwriting is that at the bottom?

16 A. Mine.

17 Q. Okay. And tell the panel what those
18 numbers represent.

19 A. Well, I was trying to figure out what the
20 client should have been charged for both trades and how
21 much he was overcharged. So I took both trades and I
22 totalled those two together. And then I took the dollar
23 amount of what he had actually charged, less the -- what
24 he should have been charged. And that was the total
25 dollar amount that I thought that he was overcharged.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

252

1 Q. So the numbers in the middle are the
2 commission -- the \$169.47 and \$197.74 that should have
3 been charged and the bottom is the \$990, what he did
4 charge?

5 A. Right.

6 Q. And then if you go to the next page, 24,
7 tell the panel what this represents.

8 A. I requested Ken to submit me a trade
9 correction form so that we could get the commission
10 adjusted to where the client should have been charged.
11 And so he filled out -- part of this is his handwriting
12 and the other piece is my handwriting.

13 Q. Where it says BAM note --

14 A. Even at the top where it says "COMM should
15 be \$79.94", that's my handwriting. And then the note
16 before, what I put in before.

17 Q. Tell the panel what that says there.

18 A. "FC inputted trade in excess of commission.
19 Firm guidelines at \$197, FC put \$495. Trade to be
20 reduced 10/1 of '09."

21 Q. And does that also pertain to the second
22 trade? Let me make sure I have that. Page 24. Did I
23 do 24? I'm sorry. I apologize. Go back to 21. I
24 misspoke. And is this the same report that you just
25 described for the other --



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

253

1 A. It is.

2 Q. And why don't you just tell us what your
3 handwriting is, what it says?

4 A. My handwriting says, "The comm should be
5 \$169.47", my signature, date and then "reduced
6 commission to flat \$169.47 in BAM note. FC inputted
7 trade in excess of commissions from guidelines at
8 \$169.47. FC put \$495, trade to be reduced 10/1/09",
9 with my initials.

10 Q. Now let's go back to 20, the next page.
11 And I understand that what we just read came after your
12 e-mail to Mr. Shaffer, because that's a September 29th
13 e-mail. Did you get a response from Mr. Shaffer to your
14 September 29 e-mail?

15 A. I did.

16 Q. And could you go to the first page of
17 Claimant's Exhibit 10, the very first page of -- I'm
18 sorry -- Tab 10, the first page. And let's talk about
19 the middle e-mail from Mr. Shaffer to you. Take a look
20 at that and then I'll ask you a question.

21 Did you receive this e-mail from
22 Mr. Shaffer responding to your inquiry about these two
23 trades?

24 A. I did.

25 Q. When you got this -- when you received this



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

254

1 e-mail, what was your reaction to it?

2 A. I was shocked.

3 Q. Why?

4 A. Well, one of the things that I've always
5 spoken with the FCs about is memorializing things in an
6 e-mail format. And for him to memorialize that it
7 was -- that he thought that gouging was part of our
8 business plan, I didn't believe that he did that.

9 And second, I almost felt that it was
10 disrespectful to me and to the firm that he would be so
11 flippant about his response to me.

12 Q. And after you received this e-mail, what
13 did you do next?

14 A. Well, I immediately took it to my regional
15 sales manager as, you know, per my guidelines, because
16 she is his supervisory principal, and I brought it to
17 her attention.

18 Q. Who is that?

19 A. Jan Krug.

20 CHAIRMAN: You said something about
21 guidelines?

22 A. Well, what I'm talking about is as a branch
23 administration manager, at the end of the day, the
24 person who's ultimately responsible for the supervision
25 of the office is the regional sales manager. And it is



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

255

1 the person that Ken Shaffer directly reported to.

2 So Ken wasn't a direct report to me, he was
3 a direct report to the sales manager. And therefore, it
4 was, you know, part of my responsibility to ensure that
5 I was properly communicating concerns that were taking
6 place with her direct reports.

7 Q. And so that was the Jan Krug that's
8 indicated there?

9 A. Correct.

10 Q. I'm sorry. Indicated in that top e-mail.
11 Let's take a look at that top e-mail. It was from you
12 to a Kelly Marks with a ccs to, you know, yourself,
13 Mr. Mark Webster, et cetera. First of all, who is Kelly
14 Marks?

15 A. Kelly Marks is one of the senior managers
16 in our compliance department here in San Francisco. She
17 is responsible for regulatory inquiries. She is
18 responsible for customer complaints and she's
19 responsible for the registration group.

20 Q. Why don't you send the e-mail to her?

21 A. I was requested to do so by -- I believe it
22 was Jan Krug. Directly after I received this e-mail,
23 not only did I take it to Jan Krug, but I also took it
24 to another one of our senior managers. And I believe it
25 was Leo Hamel at the time.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

256

1 Q. And just for the record, what was
2 Mr. Hamel's position at the time?

3 A. Regional manager.

4 Q. And what was his role? What were his
5 duties?

6 A. His role was more as a -- he's a manager of
7 what we call the private banks. So it's the umbrella
8 that Wells Fargo Investments falls under. So he was
9 responsible for all the activity that took place in that
10 office between the investment group, of the private bank
11 group, our estate planning group. He was responsible
12 for that.

13 Q. You also copied I think Mark Webster on
14 this?

15 A. Right.

16 Q. Why did you copy him on the e-mails?

17 A. Mark Webster had recently been promoted to
18 a new position called -- now it's called the Senior
19 Director of Brokerage, which means that he is
20 responsible for all of Wells Fargo Investments in
21 Northern California.

22 And, therefore, the regional sales managers
23 all report directly in to him. And I was requested to
24 copy in Mr. Webster, as well as Ms. Marks.

25 CHAIRMAN: Who advised you to do that?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

257

1 WITNESS: Jan Krug.

2 CHAIRMAN: Go ahead.

3 A. And to let them know of the situation that
4 I had uncovered. And but more -- it wasn't so much even
5 the situation. It was really the e-mail that he sent
6 and that he had memorialized in response to the fact
7 that it was in Wells Fargo's business plan to gouge
8 customers.

9 BY MR. KANE:

10 Q. And while this was going on, did another
11 issue come up in connection with Mr. Shaffer?

12 A. Well, Kelly -- it's my understanding that
13 Kelly Marks had notified other people within our
14 compliance group, one of them by the name of Brian
15 Aldridge. And Brian Aldridge is my compliance analyst.
16 So --

17 Q. What does he do?

18 A. He is responsible for my internal
19 examinations. He literally comes in and does my
20 internal examinations. He's responsible for our monthly
21 surveillance, enhanced surveillance to make sure I'm
22 doing my job.

23 In addition, he's also a resource for me
24 should I have any questions regarding compliance,
25 someone that I could readily reach out to that I had a



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

258

1 relationship with that could help me find my way.

2 Q. So what was Mr. Aldridge's involvement
3 here?

4 A. Well, Mr. Aldridge, after he was -- after
5 this was brought to his attention, did an additional
6 review on what we call our Assenter system.

7 Q. Describe for the panel what is an Assenter
8 system?

9 A. Assenter is an e-mail system that allows us
10 to capture and to review e-mails that are in and out of
11 Wells Fargo, but not internally. And this is a way for
12 us to meet with FINRA guidelines of reviewing incoming
13 and outgoing correspondence via the e-mail systems.

14 Q. So in connection with Mr. Aldridge's review
15 through a center of these e-mails, did he bring an
16 e-mail to your attention regarding Mr. Shaffer, or a
17 series of e-mails regarding Mr. Shaffer?

18 A. He did.

19 Q. And if you would, take a look please in the
20 white notebook, it would be Tab 9. And just look at all
21 those pages and then I'll ask you a question.

22 MR. SHAFFER: Can I ask a question?

23 CHAIRMAN: When it's your turn.

24 BY MR. KANE:

25 Q. Have you had an opportunity to review



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

259

1 Exhibit 9?

2 A. Yes.

3 Q. Just tell the panel what Exhibit 9
4 represents.

5 A. Exhibit 9 represents a fax that we received
6 from Brian Aldridge. And I can tell because it's his
7 fax number.

8 CHAIRMAN: You said the stocks you
9 received?

10 MR. KANE: A fax.

11 BY MR. KANE:

12 Q. I'm sorry. So we're clear, the fax header
13 at the top indicates that Mr. Aldridge faxed you this
14 string of e-mails.

15 A. Right. And it also has his writing, which
16 is the Brian A to Dan G and the written complaint down
17 on the bottom.

18 Q. That's Mr. Aldridge's handwriting?

19 A. Correct.

20 Q. So what are these e-mails?

21 A. These e-mails are e-mails that he pulled
22 from our Assenter system in which he did a review. And
23 he identified this e-mail and asked if we were aware of
24 this written complaint that had come in through the
25 e-mail system.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

260

1 Q. And had you been aware of it?

2 A. No, I had not.

3 Q. Had Mr. Shaffer brought this e-mail of Doug
4 Johnson this we down here of September 11, '09 to any
5 manager's or supervisor's attention at Wells Fargo?

6 A. No, he did not.

7 Q. You've heard Mr. Shaffer's testimony that
8 he didn't believe for whatever reason that this was not
9 a written complaint. It's Brian Aldridge writing that
10 says "written complaint" where it says "my attorney will
11 contact you next. I'm pissed you got me into this."

12 A. Correct.

13 Q. When you saw this e-mail, did you view this
14 to be a complaint that needed to be reported to
15 management that Mr. Shaffer failed to report?

16 A. Yes, I did.

17 Q. Why did you come to that conclusion?

18 A. Anytime that you mention that my attorney
19 will contact you, any word of the -- any word of
20 attorney, I think at that point, you need to engage us
21 because there's definitely an issue and the client is
22 definitely complaining. Someone who isn't complaining
23 won't throw around the word attorney.

24 Q. In addition, he said "I'm pissed you got me
25 into this"?



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

261

1 A. Exactly.

2 Q. So take a look at Exhibit 11, Tab 11. Is
3 that the portion of Wells Fargo's compliance manual that
4 deals with customer complaints and the reporting of
5 customer complaints?

6 A. It is.

7 Q. Did Mr. Shaffer follow that procedure in
8 connection with the written complaint that we just
9 talked about?

10 A. He did not.

11 Q. Now let's go back to Exhibit 10 for a
12 minute. I'm sorry 9. I apologize. 9. In connection
13 with your conversations with Mr. Aldridge regarding this
14 e-mail, did you ever discuss with him Mr. Shaffer's
15 production levels, whether they were high, low or
16 indifferent. Was that a subject matter that ever came
17 up?

18 A. No.

19 Q. In connection with Exhibit 10, when you
20 were -- had discussions with any of the individuals that
21 are copied on this e-mail on Exhibit 10, did you ever
22 have any discussions with any of those individuals of
23 what Mr. Shaffer's production was?

24 A. No. Outside of the fact that I did state
25 that at that point he was on written performance



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

262

1 warning. But production -- just for clarification, if I
2 could, production wasn't anything that I paid a lot of
3 attention to. I tried not to pay attention to
4 production.

5 Because in my view, I don't want there to
6 be anything colored as far as what types of trading
7 they're doing or for them to differentiate between
8 someone who is a high, high producer or low producer. I
9 want to look at this trade and not have this other
10 information be part of my thought process.

11 So even today, if you were to ask me what
12 production level any of my financial advisers were at, I
13 wouldn't be able to tell you.

14 Q. So we've got Exhibit 10 with the trade
15 issue and we've got Exhibit 9 with the e-mail issue.
16 After you have that information in your possession, what
17 happens next?

18 A. Well, it's a -- when Kelly Marks received
19 the e-mail, part of a standard practice that we do is
20 we -- she will determine whether or not this is
21 something that warrants what we call a conference call
22 to that extent where we involve various parties from the
23 firm to discuss the issue to determine the risk that as
24 a firm we have and whether or not we need to mitigate
25 that risk. So Kelly Marks requested that we have that



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

263

1 conference call. And there were various people
2 firm-wide on that call.

3 Q. So just so we're clear, let's sure we have
4 an approximate time for this conference call?

5 A. If I recall, that call was around 1:00 or
6 2:00 in the afternoon.

7 Q. On September 29th?

8 A. No, on October 1st.

9 Q. So sometime on the afternoon of
10 October 1st, who are the participants of the conference
11 call? Just identify them for the panel and what their
12 positions were with the firm.

13 A. To the best of my recollection, it was
14 myself, it was Jan Krug, it was Kelly Marks, Brian
15 Aldridge.

16 Q. And Kelly Marks' position again?

17 A. I'm sorry. She was the compliance manager.
18 Brian Aldridge. I believe Susan Muser was on that call.

19 Q. Who is she?

20 A. She is Brian Aldridge's manager.

21 Q. Okay. L. G. D'Orio, who is that?

22 A. He is the registrations manager.

23 Q. What does he do?

24 A. He's in charge of registrations and
25 licensing.



ESQUIRE
an Alexander & Gallin Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquireolutions.com

Arbitration

March 18, 2011

264

1 Q. U4s, U5s?

2 A. U4s, U5s. We have an HR representative on
3 the line.

4 Q. Who was that?

5 A. It's either Christy Longley or Eva McCaya.
6 It was one of those two. I can't specifically remember
7 who our HR consultant was. But we never have a call
8 with an HR consultant on the phone.

9 ARBITRATOR: The HR manager works for Wells
10 Fargo exclusively?

11 A. Correct. And then we also had -- Jackie
12 Sun was on that call.

13 BY MR. KANE:

14 Q. Who is she?

15 A. She is a lawyer representing Wells Fargo
16 Investments employee law. So she's in charge of
17 reviewing various things that have to do with employee
18 relations.

19 Q. So an attorney was participating in that
20 conference call?

21 A. Yes.

22 Q. Because an attorney was participating in
23 this call, I don't want to ask you about what took place
24 during the conference call. But I do want to ask you,
25 after that conference call, what happened next?



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

265

1 A. Obviously, there was a recommendation that
2 was made. And Jan Krug had to make a decision on the
3 viability of Mr. Shaffer's employment, at which time a
4 decision had been made to proceed with termination of
5 his employment.

6 Q. What happened after that?

7 A. Jan Krug called Ken Shaffer to come.

8 Q. Were you present when she called
9 Mr. Shaffer?

10 A. I was.

11 Q. Why don't you just tell the panel what you
12 remember about that?

13 A. She asked Ken to come in so that we could
14 have a discussion on what happened, and to also bring
15 his laptop with him.

16 Q. Anything else said during this
17 conversation?

18 A. No.

19 Q. And did Mr. Shaffer bring in -- come in
20 that day?

21 A. He did not.

22 Q. As he was requested?

23 A. He did not.

24 Q. Had he been requested to come in that day?

25 A. He had been requested to.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

266

1 MR. SHAFFER: Ordered.

2 BY MR. KANE:

3 Q. And so when he didn't come in that day,
4 what happened next?

5 A. Well, of course by this time, we're pretty
6 late in the afternoon. And Jan Krug had asked me to go
7 out to his store location the following day and to
8 proceed with the termination of Mr. Shaffer.

9 Q. Up to now, had anybody discussed with you
10 Mr. Shaffer's production levels at all regarding --

11 A. No.

12 Q. Okay. So you proceed to -- was it Empire
13 Ranch?

14 A. Empire Ranch.

15 Q. You went there the next day, I guess,
16 October 2nd?

17 A. Uh-huh.

18 Q. Tell the panel what happened.

19 A. Well, prior to going, Jan Krug had coached
20 me. Because this isn't something that's part of my
21 normal function. I typically don't personally terminate
22 financial advisers. It's a function of the regional
23 sales managers. So she coached me in what I should
24 be -- what I should include in my conversation with him
25 and what I needed to do.



ESQUIRE
an Alexander Gatto Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

267

1 ARBITRATOR: Do you have any idea why she
2 didn't do it herself?

3 WITNESS: I wracked my brain over that and
4 I don't. You know, there might have been a meeting
5 going on. She might have had a commitment the following
6 day. I really don't recall.

7 BY MR. KANE:

8 Q. Let me ask you a question as a follow-up to
9 that: When you participated in this call when Ms. Krug
10 was asking him to come in that day to meet, was it your
11 understanding that if he had come in, it would have been
12 you and her?

13 A. Absolutely.

14 Q. So when he didn't show up, it was after
15 that that Ms. Krug asked you to go out there?

16 A. Exactly. So that leads me to believe that
17 there had been something that she couldn't get out of
18 her calendar that prohibited her from going that
19 following day. And it had to be taken care of. It had
20 to be resolved.

21 Q. And as best you recall, tell the panel
22 everything you recall about that meeting with
23 Mr. Shaffer. It's just you and him?

24 A. I recall going into the office. I recall
25 he asked me am I there to terminate him. I said yes.



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquire resolutions.com

Arbitration

March 18, 2011

268

1 He told me that -- he goes, "I want you to know that
2 you're not going to one red dime out of me. I'm not
3 going to pay you anything."

4 I then tried to remind him that this was as
5 a result of the two compliance violations that we noted,
6 the failure to forward a written complaint and for
7 marking up the client's account.

8 I also recall having a conversation with
9 him at the time that really the thing that sealed the
10 deal, or however you want to say that, was the e-mail;
11 that that e-mail was disturbing, not just to me, but to
12 other people within the compliance group.

13 I then asked him for his laptop and his
14 keys, as we normally do. He was agitated, as I'm sure
15 he would be, being terminated. But we were in a
16 store -- we were in the middle of the bank branch and it
17 was getting loud, so I was trying the best I could to
18 try and diffuse the situation. He asked me for a copy
19 of -- he wanted a receipt for his laptop. And it's
20 something that I've never done before. I've never been
21 requested to provide a receipt for Wells Fargo property.
22 And I finally just acquiesced and gave in to him. So I
23 wrote him a handwritten receipt for the laptop. And
24 then he proceeded to pack up his personal belongings.

25 And then I stayed there in the store to --



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

269

1 what I always do like an exit examination, just to make
2 sure that everything is there, Wells Fargo client files
3 are there, and anything wasn't taken that I considered
4 proprietary information.

5 I also do recall at that time that he did
6 ask me for information regarding his gross production
7 runs, which I was not inclined to give him. Because we
8 do consider that the proprietary information.

9 The commission runs actually list out
10 client names and account numbers and things like that.
11 So it wasn't something that I was willing to give him.
12 To be perfectly honest with you, I didn't even know how
13 to access it. That's how little I pay attention to the
14 production, is I didn't have -- personally, at that
15 point, I didn't have access to that program to be able
16 to pull it out.

17 Q. During this conversation with Mr. Shaffer,
18 did he inquire about the promissory note?

19 A. He did.

20 Q. Tell the panel what you recall him saying.

21 A. That was part of the coaching that Jan gave
22 me. Jan made sure that I told him that in no way was
23 the promissory note going to be forgiven as a result of
24 these actions, that that contract was still in full
25 force.



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

270

1 Q. Did you refer to the promissory note as
2 blood money during this conversation?

3 A. I don't recall that.

4 Q. Is that something you'd remember?

5 A. I hope that that's something I would
6 remember. I truly don't remember that.

7 Q. When he gave you the laptop and asked for
8 the receipt and you gave that to him, after he left,
9 what did you do next with the laptop?

10 A. Well, I went back to the office and I gave
11 the laptop to my IT consultant. And what the IT
12 consultant does is think kind of go through and they
13 will disable everything.

14 And I typically require that the hard drive
15 or their personal hard drive be saved on to my laptop so
16 that if later on there's any type of regulatory
17 inquiries or anything like that, I have access to the
18 information on his laptop.

19 Q. Just so I'm clear, what at least we're
20 talking about here is Wells Fargo does give financial
21 advisers Wells Fargo laptops to use when they are in
22 these bank branches?

23 A. Correct.

24 Q. So what did your IT person conclude?

25 A. He came back to me and told me that the



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

271

1 laptop that I had wasn't a Wells Fargo laptop and that
2 it was Ken Shaffer's personal laptop and that he had
3 given me the wrong laptop.

4 Q. What did you do next?

5 A. I was obviously really upset. If you can
6 imagine, it was difficult enough for me to go in and do
7 the termination because that is not something that I was
8 used to.

9 But I felt that he had put me in a
10 situation where he demanded a receipt for the laptop and
11 he intentionally gave me the wrong laptop and it
12 required me to have further conversation with him was
13 really disturbing.

14 Q. So what did you do?

15 A. I called him up and I told him that he had
16 to return that laptop immediately. And failure to
17 return that laptop, I would report it to the proper
18 authorities as stolen property.

19 Q. So what happened next? What was his
20 response to you?

21 A. He said he would come in and meet me.

22 Q. Okay. So what happened next?

23 A. I'm sorry.

24 Q. Do you need to take a break or just take a
25 minute?



ESQUIRE
an Alexander Gallin Company

Toll Free: 888.486.4044
2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

Arbitration

March 18, 2011

272

1 A. I'm sorry. He then requested that I meet
2 him downstairs. And I didn't feel comfortable and so I
3 had asked my IT person to go out there and meet us to
4 get -- to retrieve the laptop. And we went down into
5 the lobby area. He wasn't there. We looked in the
6 front of the parking lot and he wasn't there. So we
7 went to the back of the building and he was there. He
8 was slumped down in his car.

9 And I think one of the reasons why this is
10 so upsetting to me is that for whatever reason, I mean,
11 I've terminated a lot of people in my career. I've
12 participated in a lot of terminations. But there was a
13 lot going on with Ken at that time. And I felt that Ken
14 had the ability to go postal. I mean, he was so angry
15 with Wells Fargo. There was so much anger there. And I
16 was afraid.

17 And so I remember going out to the back
18 area and he was kind of slumped down in his car. And
19 even my IT guy said that it made him very nervous. He
20 got out of the car and he went to the trunk of his car.
21 I didn't know what was going to happen. I'm not trying
22 to be overly dramatic. It was just scary for me.

23 So he pulled out the laptop and he gave it
24 to me and we went back up to the office. Now, in the
25 33 years that I have been in -- I have never, ever, been



Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com